REMARKS

This Amendment under 37 C.F.R. §1.116 is responsive to the final Office Action mailed December 29, 2005 and is filed concurrently with a Request for Continued Examination (RCE).

At the outset, the undersigned wishes to thank Examiner Foreman for his time and courtesy during the recent telephone interview of March 23, 2006.

The specification has been amended to correct the typographical error pointed out by the Examiner.

Rejections Under 35 U.S.C. §112

In the final Office Action, claims 1-4, 8-10, 14-17, 19-21, 25, 26, and 29-31 were rejected under 35 U.S.C. §112, first and second paragraphs. Reconsideration and withdrawal of these rejections are respectfully requested.

Independent claims 1 and 16 have been amended in the manner discussed during the recent telephone interview. That is, the distal end is now recited to define a tip and the specimen collection assembly is now recited as being disposed proximally away from tip, as is the claimed tissue management assembly.

The recitation "non-circumferentially along the shaft" has been removed from both independent claims 1 and 16. Instead, claims 1 and 16 now recite that the flexible membrane is configured to "come into contact with and collect the specimen" and is "configured to surround only a portion of a circumference of the shaft when collecting the specimen". Support for this recitation may be found, for example, in Figs. 9-14 and its corresponding written description in the specification.

It is believed, therefore, that the amendments to claims 1 and 16 are fully supported in the originally-filed specification and define and circumscribe the claimed structure with the requisite degree of specificity to satisfy the requirements of 35 U.S.C. §112, second paragraph. Reconsideration and withdrawal of the 35 U.S.C. §112(1) and (2) rejections are, therefore, respectfully requested.

Rejections Under 35 U.S.C. §102(b)

Claims 1-4, 9-10, 16-17, 19-21, and 25-26 were rejected under 35 U.S.C. §102(b) as being anticipated by Cano and Burbank et al. Reconsideration and withdrawal of these rejections are respectfully requested.

As the Examiner noted during the recent telephone interview, Cano discloses a device in which the sack (Cano's term for this structure) 16 is clearly shown to surround the entire circumference of the shaft when collecting tissue. See, for example, Cano's Figs. 2, 6, 9, 11 and 13. In contrast, the device defined by claim 1 and the specimen collection method of claim 16 are claimed to include a flexible membrane that is "configured to surround only a portion of a circumference of the shaft when collecting the specimen." Cano does not teach a device having such a tissue collection assembly that includes a flexible membrane that is configured to surround only a portion of a circumference of the shaft when collecting the specimen, as claimed in amended claim 1. Moreover, as Cano's sack 16 completely surrounds the circumference of the shaft when collecting tissue, Cano cannot anticipate a method for collecting a specimen from a mass of tissue in which the collecting step is carried out with such that only a portion of the flexible membrane surrounds of a circumference of the shaft when collecting the specimen, as claimed in amended independent claim 16. Thus, it is respectfully submitted that Cano does not anticipate the claims amended herewith.

The Examiner's attention is next drawn to the Burbank et al. reference and to the §102(b) rejection based thereon. As noted by the Examiner during the recent telephone interview, Burbank teaches that the specimen encapsulating device 230 (see Fig. 16B) is rotated about the shaft when collecting tissue in such a manner as to completely surround the circumference of the shaft. This is explicitly taught by Burbank et al., in Column 18, lines 34-35, in which they disclose that the specimen collection device 230 is configured to be rotated over an "approximately 360 degree arc" – which is another way of saying that the specimen collection device surrounds the circumference of the shaft. In another variant, Burbank et al. teach that two opposing arms 254 may be used to accomplish the same result, as shown in Fig. 18B. As explicitly taught by Burbank et al. at Column 18, lines 32-40:

> **To encapsulate the tissue specimen 260, the arms 254 are rotated about the specimen in an approximately 180 degree arc, instead of the approximately 360 degree arc of the device 230, pulling the second portions 264 over the specimen and encapsulating it, as is shown in FIG. 18b . In the shown embodiment of the invention, the sheath 262 may be in two parts, with the sheath first portions (not shown) attached to each other or attached to the shaft 256.**

Therefore, as shown in Burbank et al.'s Fig. 18B, the two opposing arms 254 each rotate about 180 degrees during the specimen collecting step, to completely surround the circumference of the shaft, which is in direct contrast with the devices and methods defined by the present claims. It is, therefore, respectfully submitted that Burbank et al. does not teach the claimed devices and methods and that the anticipatory rejections applied to the claims should be reconsidered and withdrawn.

Applicants believe that this application is now in condition for allowance. If any unresolved issues remain, please contact the undersigned attorney of record at the telephone number indicated below and whatever is necessary to resolve such issues will be done at once.

Respectfully submitted,

Date: March 29, 2006 By: _____

Alan W. Young
Attorney for Applicants
Registration No. 37,970

YOUNG LAW FIRM, P.C.
4370 Alpine Rd., Ste. 106
Portola Valley, CA 94028
Tel.: (650) 851-7210
Fax: (650) 851-7232

\\Ylfserver\ylf\CLIENTS\RUBI\5850\5850 AMEND.2.doc